

# THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **REX ANTHONY THURMAN**, who may be served with process at **2024 N. ENSENADA CIRCLE, RIO RANCHO, NM 87124** or wherever he/she may be found

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 168<sup>th</sup> Judicial District Court, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on the 21<sup>st</sup> day of October, 2020 by Attorney at Law, GABRIEL S. PEREZ, 609 MYRTLE AVE, SUITE 100, EL PASO, TX 79901, in this case numbered 2020DCV3414 on the docket of said court, and styled:

**MAYRA BARRAZA-ESPARZA  
v.  
REX ANTHONY THURMAN AND SMITHART TRUCKING, INC.**

The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition and Plaintiff's Interrogatories to Defendant Rex Anthony Thurman accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on the 30<sup>th</sup> day of October, 2020.

CLERK OF THE COURT

**NORMA FAVELA BARCELEAU**  
District Clerk  
El Paso County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk  
El Paso County, Texas

By: Veronica Cables, Deputy  
Veronica Cables

Rule 106: "-the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

NO. 2020DCV

**MAYRA BARRAZA-ESPARZA**  
Plaintiff,

V.

**REX ANTHONY THURMAN AND**  
**SMITHART TRUCKING, INC.**  
Defendants.

§ IN THE DISTRICT COURT  
§  
§ JUDICIAL DISTRICT  
§  
§ OF EL PASO COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Mayra Barraza-Esparza, hereinafter called Plaintiff, complaining of and about Rex Anthony Thurman and Smithart Trucking, Inc., hereinafter called Defendants, and for cause of action shows unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

1. Plaintiff intends that discovery be conducted under Discovery Level 3.

**PARTIES AND SERVICE**

2. Plaintiff, Mayra Barraza-Esparza, is an Individual whose address is 9339 Cannes Fwy, El Paso, Texas 79907.
3. The last three numbers of Mayra Barraza-Esparza's driver's license number are xxx. The last three numbers of Mayra Barraza-Esparza's social security number are xxx.

4. Defendant Rex Anthony Thurman, an Individual who is a nonresident of Texas, may be served with process at his home at the following address: 2024 N. Ensenada Circle, Rio Rancho, New Mexico 87124. Service of said Defendant as described above can be effected by personal delivery.

5. Defendant Smithart Trucking, Inc., a Nonresident Corporation, may be served

pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code by serving the registered agent of the corporation, Deral Meek, at 811 14th Street SW, Albuquerque, New Mexico 87124, its registered office. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

#### **JURISDICTION AND VENUE**

6. The subject matter in controversy is within the jurisdictional limits of this court.
7. Plaintiff seeks:
  - a. only monetary relief of \$1,000,000 or less but more than \$250,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.
8. This court has jurisdiction over Defendant Rex Anthony Thurman, because said Defendant purposefully availed himself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over Rex Anthony Thurman will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.
9. Furthermore, Plaintiff would show that Defendant Rex Anthony Thurman engaged in activities constituting business in the state of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that said Defendant committed a tort in whole or in part in Texas.
10. On or about February 4, 2020, Defendant Thurman was operating the motorvehicle owned by Defendant Smithart in El Paso County, Texas, availing himself to the laws of the State of Texas while engaged in the course and scope of his employment.

11. This court has jurisdiction over Defendant Smithart Trucking, Inc., because said Defendant purposefully availed itself of the privilege of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over said Defendant, and the assumption of jurisdiction over Smithart Trucking, Inc. will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

12. Furthermore, Plaintiff would show that Defendant Smithart Trucking, Inc. engaged in activities constituting business in the state of Texas as provided by Section 17.042 of the Texas Civil Practice and Remedies Code, in that said Defendant committed a tort in whole or in part in Texas.

13. On or about February 4, 2020, Defendant Thurman was operating the motor vehicle owned by Defendant Smithart in El Paso County, Texas, availing himself to the laws of the State of Texas while engaged in the course and scope of his employment.

14. Venue in EL PASO County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

#### **FACTS**

15. On or about February 4, 2020, Defendant Thurman was operating the motor vehicle owned by Defendant Smithart in El Paso County, Texas, and while attempting to leave the property located at 1100 Burgandy street, which is in El Paso County, Texas, Defendant Thurman proceeded to back out of said property thereby blocking the thoroughfare that was a public road. The weather on February 4, 2020 was rainy, which further compounded the unreasonable risk created by Defendant Thurman. Plaintiff was operating her motor vehicle

along Burgandy street when she came across the blocked roadway without sufficient time to stop thereby colliding with the trailer pulled by Defendant Thurman and owned by Defendant Smithart Trucking, Inc.

**PLAINTIFF'S CLAIM OF  
NEGLIGENCE AGAINST REX ANTHONY THURMAN**

16. Defendant Rex Anthony Thurman had a duty to exercise the degree of care that a reasonably careful person would use to avoid harm to others under circumstances similar to those described herein.

17. Plaintiff's injuries were proximately caused by Defendant Rex Anthony Thurman's negligent, careless and reckless disregard of said duty.

18. The negligent, careless and reckless disregard of duty of Defendant Rex Anthony Thurman consisted of, but is not limited to, the following acts and omissions:

- A. In that Defendant Rex Anthony Thurman failed to keep a proper lookout for Plaintiff's safety that would have been maintained by a person of ordinary prudence under the same or similar circumstances; and
- B. Defendant Rex Anthony Thurman proceeded to block the roadway while the weather was inclement thereby creating an unreasonable risk of harm to the public.

**PLAINTIFF'S CLAIM OF  
RESPONDEAT SUPERIOR AGAINST SMITHART TRUCKING, INC.**

19. At the time of the occurrence of the act in question and immediately prior thereto, Rex Anthony Thurman was within the course and scope of employment for Defendant Smithart Trucking, Inc..

20. At the time of the occurrence of the act in question and immediately prior thereto, Rex Anthony Thurman was engaged in the furtherance of Defendant Smithart Trucking, Inc.'s business.

21. At the time of the occurrence of the act in question and immediately prior thereto, Rex Anthony Thurman was engaged in accomplishing a task for which Rex Anthony Thurman was employed.

22. Plaintiff invokes the doctrine of Respondeat Superior as against Defendant Smithart Trucking, Inc..

**DAMAGES FOR PLAINTIFF, MAYRA BARRAZA-ESPARZA**

23. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Mayra Barraza-Esparza was caused to suffer injuries to her neck and back, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, Mayra Barraza-Esparza for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in EL PASO County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future; and
- E. Loss of earnings in the past.

**RULE 194 REQUEST FOR DISCLOSURES**

Pursuant to Texas Rules of Civil Procedure 194, Plaintiff hereby requests that Defendants respond to the requests contained therein within 51 days of service.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff, Mayra Barraza-Esparza, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final

hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

Ortega, McGlashan & Perez, PLLC

By: 

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Attorney for Plaintiff  
Mayra Barraza-Esparza

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**

**CAUSE NO. 2020DCV3414**

**MAYRA BARRAZA-ESPARZA,**

*Plaintiff,*

v.

**REX ANTHONY THURMAN and  
SMITHART TRUCKING, INC.**

*Defendants.*

**IN THE DISTRICT COURT OF**

**168<sup>TH</sup> JUDICIAL DISTRICT**

**EL PASO COUNTY, TEXAS**

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**DEFENDANT REX ANTHONY THURMAN'S ORIGINAL ANSWER**

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Defendant, Rex Anthony Thurman ("Defendant"), files his Original Answer and states the following:

**I.  
GENERAL DENIAL**

1. Defendant denies each and every, all and singular, the material allegations contained within the Original Petition filed by Plaintiff, Mayra Barraza-Esparza ("Plaintiff"), and demands strict proof thereof.

**II.  
AFFIRMATIVE DEFENSES**

2. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that any damages sought to be recovered by Plaintiff should be reduced to the extent that Plaintiff has failed to take the reasonable steps that a person of ordinary prudence in a similar situation would have taken to avoid the claimed damages.

3. Pleading further, alternatively, and by way of affirmative defense,

Defendant asserts that in the unlikely event that an adverse judgment would be rendered against him, Defendant would respectfully request all available credits and/or offsets as provided by the Texas Civil Practice and Remedies Code and under Texas law.

4. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that the negligence of the Plaintiff proximately caused or contributed to the damages alleged in the Complaint, thereby reducing any damages by an amount proportionate to Plaintiff's own degree of fault in the unlikely event of an award of damages in Plaintiff's favor.

5. Pleading further, alternatively, and by way of affirmative defense, Defendant asserts that in addition to any other limitation under law, Plaintiff's recovery of medical or health care expenses be limited to the amount actually paid or incurred by or on behalf of Plaintiff, pursuant to Section 41.0105 of the Texas Civil Practices and Remedies Code.

6. Defendant hereby gives notice that he intends to rely upon such other defenses or denials, affirmative or otherwise, and to assert third-party claims and any other claims, as may become available or appear during discovery as he proceeds in this matter, and hereby reserves the right to amend his Answer to assert such defenses.

### **III. JURY DEMAND**

7. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Defendants demand a trial by jury.

**IV.  
PRAYER**

8. Defendant prays that Plaintiff take nothing by this suit, that Defendant recovers his costs without delay, and for such other and further relief, both general and special, at law and in equity, to which Defendant may show himself justly entitled.

Respectfully submitted,

**MAYER LLP**

By: /s/ Brian J. Fisher  
Brian J. Fisher  
State Bar No. 24032178

9400 Holly Avenue, Building 3B  
Albuquerque, New Mexico 87122  
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Facsimile: 505.595.1415  
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**CERTIFICATE OF SERVICE**

This is to certify that on the 30th day of November 2020, a true and correct copy of the foregoing has been forwarded to all counsel of record, as follows:

**Via eFileTexas.gov**  
**Via Email: [gabrielperez@omhplaw.com](mailto:gabrielperez@omhplaw.com)**  
Gabriel S. Perez  
609 Myrtle Avenue, Suite 100  
El Paso, Texas 79901

/s/ Brian J. Fisher  
Brian J. Fisher